



POLICE DEPARTMENT

September 25, 2015

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Marlene Welch
Tax Registry No. 898755
Intelligence Bureau
Disciplinary Case No. 2014-11330

The above-named member of the Department appeared before me on April 28, 2015 and June 24, 2015, charged with the following:

1. Said Police Officer Marlene Welch, while assigned to the 71st Precinct, on or about March 7, 2013, at about 2330 hours, while on-duty and inside the 71st Precinct stationhouse, Brooklyn, New York, wrongfully failed to comply with the order of Sergeant Larry Meyers to submit to him a Domestic Incident Report said Police Officer had prepared.

P.G. 203-03, Page 1, Paragraph 2 – COMPLIANCE WITH ORDERS - GENERAL REGULATIONS

2. Said Police Officer Marlene Welch, while assigned to the 71st Precinct, on or about March 7, 2013, at about 2330 hours, while on-duty and inside the 71st Precinct stationhouse, Brooklyn, New York, having been ordered by Sergeant Larry Meyers to submit to him a Domestic Incident Report said Police Officer had prepared, wrongfully submitted said report to another Sergeant in the 71st Precinct.

P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT – PROHIBITED CONDUCT - GENERAL REGULATIONS

3. Said Police Officer Marlene Welch, while assigned to the 71st Precinct, on or about March 7, 2013, at about 2335 hours, while inside the 71st Precinct stationhouse, Brooklyn, New York, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, in that said Police Officer was discourteous to Sergeant Larry Meyers when he asked her for a Domestic Incident Report she had prepared, stating, "Don't talk to me like a little girl."

P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT – PROHIBITED CONDUCT - GENERAL REGULATIONS

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4. Said Police Officer Marlene Welch, while assigned to the 71st Precinct, on or about March 7, 2013, at about 2335 hours, while inside the 71st Precinct stationhouse, Brooklyn, New York, wrongfully failed to comply with the order of Sergeant Larry Meyers to re-prepare a Domestic Incident Report and submit it to him, and by leaving the stationhouse.

P.G. 203-03, Page 1, Paragraph 2 – COMPLIANCE WITH ORDERS - GENERAL
REGULATIONS

The Department was represented by Jordan Farnham, Esq., Department Advocate's Office, and Respondent was represented by John Tynan, Esq.

Respondent, through her counsel, entered a plea of not guilty to the charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent is found Guilty of Specification Nos. 1, 3 and 4. Respondent is found Not Guilty of Specification No. 2.

SUMMARY OF EVIDENCE PRESENTED

It is not disputed that on March 7, 2013, Respondent was on-duty, assigned to the 71 Precinct; that she and her partner, Police Officer Raynard Fabers, responded to a domestic incident radio call; and that she prepared a Domestic Incident Report (DIR) [Respondent's Exhibit A]. Respondent and Fabers arrived back at the 71 Precinct at about 2330 hours. Their tour of duty was scheduled to end at 2335 hours. The desk officer on-duty was Sergeant Larry Meyers whose tour of duty that day was scheduled to end at 2347 hours. Respondent approached Meyers at the front desk and they engaged in a conversation regarding her DIR.

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Meyers, who as of March 7, 2013, had been a sergeant for seven months, testified that he had noticed on his computer that Respondent had a DIR to turn in. Meyers asserted that because DIRs were "normally" handed in to the desk sergeant to be reviewed and signed, when Respondent approached the front desk he asked Respondent where her DIR was and told her to hand it in. Respondent told him that the DIR "was done" and that she wanted him to sign it. Meyers asserted that when DIRs are handed in to him while he is serving as the desk officer he reads them and signs them right away if he has the time but, since he was very busy then, he told her, "Hand it in to me." She responded that because other paperwork she had left at the desk in the past had been lost, she wanted the DIR signed. Meyers then told her, "If you feel uncomfortable about that, you can make a photocopy, that way you have it for your records as proof that you did it." Meyers described Respondent's demeanor as "a little bit nasty" and it appeared to him that "she had an attitude." Meyers "told her again to just hand in" the DIR.

Meyers recalled that Sergeant Cheng was also at the front desk at that time because he was the supervisor who would be replacing Meyers as the desk officer when Meyers' tour ended. Meyers asserted that Respondent turned to Sergeant Cheng and asked him if he would sign her DIR. Meyers then told her, "He is not signing anything. I am the only one that gets it." Respondent then walked away.

About ten minutes later, Meyers observed Respondent signing out and he asked her where her DIR was. In a "nasty" manner, she told him, "Don't talk to me like a little girl," and she pointed toward "the 124 Room" (the complaint room). Meyers entered the complaint room, retrieved Respondent's DIR, and observed that it contained "omissions" and had been signed by Sergeant Jamil Cadogan. When Meyers told Respondent to prepare a new DIR, she walked to

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the back of the stationhouse. Meyers consulted with the Integrity Control Officer (ICO) and the next day Meyers drafted a Command Discipline to be issued to Respondent.

Meyers confirmed that during March, 2013, keeping tabs on DIRs was a sensitive issue at the 71 Precinct and that he had told Respondent not to hand her DIR to Sergeant Cheng because "she works on my tour" and therefore it was his responsibility to review and sign her DIR. After Meyers told Respondent to either "fix" her DIR or prepare a new one, she told him, "I signed out. I am leaving. I am not doing another report."

Police Officer Raynard Fabers testified that he was at the front desk and heard Respondent ask Meyers to sign her DIR. Meyers told her that he was busy at that time and to leave the DIR on the desk. Respondent asked Meyers a second time to sign her DIR and Meyers again told her that he had a lot of stuff to do, that he would take care of her DIR at the end of the tour, and she should just leave the DIR on the desk. Respondent told Meyers that because some DIRs get lost, she wanted Meyers to sign her DIR because she did not want to be responsible for the DIR. Meyers told her that if she felt that way she could make a photocopy of the DIR. Fabers recalled that Respondent asked Meyers about four or five times "to stop what he was doing to sign the DIR." Fabers then walked away to sign out "because it was starting to get a little out of hand." When Fabers was asked what he meant by "a little out of hand," he answered, "Well, he is the sergeant. If he says leave it on the desk, leave it on the desk." Fabers did not hear Meyers order Respondent to remain at the desk.

Sergeant Jamil Cadogan testified that he was assigned as the Assistant Integrity Control Officer (AICO) at the 71 Precinct on March 7, 2013, and he was on-duty inside his office in the basement of the stationhouse when Respondent approached him and asked him to review and sign a DIR. Although as AICO he had not been reviewing and signing DIRs, which were

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normally reviewed and signed by either the patrol supervisor or the desk officer, he agreed to Respondent's request because she told him that the desk officer had a great deal of work.

Cadogan explained that at that time it was not improper for a police officer who was assigned to the 71 Precinct to submit a DIR to an on-duty supervisor who was not serving as the patrol supervisor or the desk officer. That policy has since been changed. Cadogan agreed that he had overlooked some discrepancies on the DIR when he read and signed the DIR. He confirmed that the DIR indicated that the complainant had been uncooperative and had not requested a police response.

Respondent's testimony will be discussed in the Findings and Analysis section.

FINDINGS AND ANALYSISSpecification No. 1

I find Respondent guilty of having failed to comply with Sergeant Meyers' order to submit her DIR to him. Respondent acknowledged that when she approached Meyers and requested that he sign her DIR, he told her to leave her DIR with him. Despite Meyers' order that she hand the DIR to him and that he would review it and sign it as soon as he had time to do so, Respondent admitted that she got tired of waiting and so she went to Sergeant Cadogan and asked him to sign her DIR.

Officer Fabers, Respondent's partner, corroborated Meyers' testimony that he directed Respondent to leave the DIR with him at the front desk, and Fabers also corroborated Meyers' testimony that when Respondent expressed concern that if she left the DIR with Meyers he could lose it, Meyers told her to make a photocopy of the DIR for her records. Even if I credited Respondent's claim that she waited 20 to 25 minutes in vain for Meyers' to review and sign her

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DIR, since Respondent did not ask Meyers for permission to hand her DIR to another supervisor to review and sign, she failed to comply with Meyers' order that she submit her DIR to him.

Therefore, Respondent is found guilty of Specification No. 1.

Specification No. 2

It is charged that Respondent "wrongfully submitted" her DIR to Sergeant Cadogan. Since Cadogan testified that at that point in time it was not improper for a police officer who was assigned to the 71 Precinct to submit a DIR to an on-duty supervisor who was not serving as the patrol supervisor or the desk officer, Respondent's action of asking him to sign her DIR was not, in and of itself, improper and Respondent's failure to submit her DIR to Meyers to review and sign is addressed by Specification No. 1.

Also, although the Assistant Department Advocate (the Advocate) argued that Respondent's action of approaching Cadogan constituted going "over Meyers' head," since both men held the rank of sergeant, I reject this argument.

Therefore, Respondent is found not guilty of Specification No. 2.

Specification No. 3

Respondent admitted that when Meyers confronted her and accused her of ignoring his order that she submit her DIR to him, she told him, "I'm an adult." Although the statement that Respondent admitted to making does not precisely mirror Meyers' testimony that she told him, "Don't talk to me like a little girl," Respondent's admitted remark constituted the same discourteous verbal message since she was clearly accusing Meyers of treating her like a child. Since police officers must always speak to supervisors in a courteous manner, even if

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Respondent felt that Meyers was treating her like a child, it was improper for her to express this feeling in the manner she did.

Therefore, Respondent is found guilty of Specification No. 3.

Specification No. 4

The record establishes that Meyers' order to Respondent that she either fix or re-prepare her DIR and submit it to him was a lawful order. Respondent confirmed that she had failed to enter the time of response on her DIR and Sergeant Cadogan credibly testified that after he signed her DIR it was pointed out to him that Respondent had not entered a date of birth for the complainant or a physical description of the complainant on the DIR. Since Respondent had spoken to the complainant, she could have and should have written a physical description of the complainant on the DIR. Although the date of birth omission may be attributed to the lack of cooperation that Respondent received from the complainant, Respondent apparently never told Meyers that this was the reason for the omission.

The record also establishes that Meyers issued a clear and direct order to Respondent. Respondent admitted that she had just signed out in uniform when Meyers approached her and loudly demanded that she, "Get in the room right now!" She admitted that instead of complying with this order, she walked into the female locker room, took off her uniform, changed into civilian clothing, and left the stationhouse without Meyers' permission. Respondent had no right to ignore Meyers' order merely because Cadogan had signed her DIR and her scheduled tour of duty had ended.

Therefore, Respondent is found guilty of Specification No. 4.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. *See Matter of Pell v. Board of Education*, 34 N.Y.2d 222, 240 (1974). Respondent was appointed to the Department on October 15, 1990. Information from her personnel folder that was considered in making this penalty recommendation is contained in the attached confidential memorandum. The Advocate recommended that Respondent forfeit 15 vacation days as a penalty.

Respondent has been found guilty of failing to comply with two orders issued to her by a sergeant. As to Meyers' order that she hand her DIR in to him, it is clear that when Respondent, who was then a 22-year veteran of the Department, entered the stationhouse five minutes before the end of her tour and saw that Meyers, who had been promoted to sergeant only seven months earlier, was the desk officer and that he was very busy, she became concerned that Meyers might not sign, or might lose, her DIR. Respondent's partner, Fabers, corroborated her claim that the reason she wanted Meyers to sign her DIR immediately was because she was genuinely and legitimately concerned that her DIR might get lost because some DIRs had gotten lost.

Also, Meyers' testimony that only he could sign Respondent's DIR because "she works on my tour," was not supported by Cadogan and reflects a control posture that may not have been entirely reasonable under the circumstances presented here where Respondent was at the end of her tour. Nonetheless, once Meyers told Respondent to hand the DIR in to him, and later when Meyers ordered her to, "Get in the room right now!" Respondent was under a duty to comply with these directives.

In *Case No. 2013-10619* (signed Sept. 16, 2014), a ten-year officer who had no prior disciplinary record forfeited ten vacation days for failing to comply with a lawful order to stand

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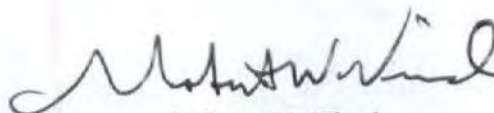
by to process an arrest. However, the officer in that case also performed a court tour at an unauthorized time; failed to notify a supervisor that a felony assault had taken place during a domestic violence incident; and failed to timely prepare a complaint report and a DIR.

With regard to Respondent's misconduct of being discourteous to Meyers, it is not disputed that Respondent did not scream at, threaten or direct any profane language at Meyers. In *Case No. 2014-12180* (signed May 1, 2015), a seven-year officer who had no prior disciplinary record received a penalty of the forfeiture of ten vacation days for being discourteous to a sergeant after the sergeant had denied the officer's request to take an emergency day. However, in that case, the officer not only raised his voice and accused the sergeant of calling him a liar, the officer also threw his uniform shirt and pants in the direction of the sergeant.

Finally, I have also taken into consideration that since Respondent has no formal disciplinary record in 24 years of service, her misconduct here appears to be an aberration from her normal manner of dealing with supervisors.

Therefore, it is recommended that Respondent forfeit ten vacation days as a penalty.

Respectfully submitted,



Robert W. Vinal
Assistant Deputy Commissioner – Trials

APPROVED

NOV 10 2015

WILLIAM J. BRATTON
POLICE COMMISSIONER

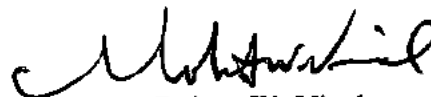
POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner - Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER MARLENE WELCH
TAX REGISTRY NO. 898755
DISCIPLINARY CASE NO. 2014-11330

Respondent received an overall rating of 3.0 on her 2014 annual performance evaluation, 3.0 on her 2013 annual evaluation, and 3.5 on her 2012 evaluation. She has been awarded one Commendation and one Excellent Police Duty medal. [REDACTED]

[REDACTED] She has no prior formal disciplinary record. On Sept. 10, 2008, she was placed in Level 1 Force Monitoring which ended on Oct. 21, 2009.

For your consideration.



Robert W. Vinal
Assistant Deputy Commissioner – Trials